

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DEMEL DUKES, # 387682,

Petitioner,

v.

Case Number: 07-cv-15011
Honorable George Caram Steeh

MARY BERGHUIS,

Respondent.

**ORDER DENYING MOTIONS FOR CERTIFICATE
OF APPEALABILITY AND TO PROCEED *IN FORMA PAUPERIS* AS MOOT**

On July 24, 2008, this Court denied Petitioner Dukes's petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, for failure to comply with the statute of limitations pursuant to 28 U.S.C. § 2244(d)(1). *Dukes v. Berghuis*, No. 07-cv-15011 (E.D. Mich. July 24, 2008). In that opinion and order, the Court also declined to issue Dukes a certificate of appealability and an application for leave to proceed on appeal *in forma pauperis*. Subsequently, on September 2, 2008, the Court denied his motion for certificate of appealability and application to proceed on appeal *in forma pauperis* as moot. Following, on January 16, 2009, the United States Court of Appeals for the Sixth Circuit denied Dukes a certificate of appealability and dismissed the appeal. *Dukes v. Berghuis*, No. 08-2120 (6th Cir. Jan. 16, 2009). Then on April 14, 2010, Dukes filed a Rule 60(b) motion for relief from judgment. The Court denied the motion and also denied Dukes a certificate of appealability and leave to proceed on appeal *in forma pauperis*. *Dukes v. Berghuis*, No. 07-cv-15011 (E.D. Mich. Apr. 21, 2010). Pending before the Court are Dukes's "Motion for Certificate of Appealability" [dkt. # 18] and "Motion to Proceed *In Forma Pauperis*" [dkt. # 19]. For the reasons stated, the Court will deny the motions.

I. DISCUSSION

In its opinion and order denying Dukes's motion for relief from judgment, the Court stated:

The Court also declines to issue Petitioner a certificate of appealability. A habeas petitioner is required to obtain a certificate of appealability in order to appeal the denial of a motion for relief from judgment brought pursuant to Fed.R.Civ.P. 60(b). *See United States v. Hardin*, 481 F.3d 924, 926 (6th Cir. 2007).

The Second Circuit Court of Appeals has articulated the standard for issuing a certificate of appealability in the context of the denial of a Rule 60(b) motion as follows:

[A] COA should issue only if the petitioner shows that (1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the 60(b) motion, states a valid claim of the denial of a constitutional right.

Kellogg v. Strack, 269 F.3d 100, 104 (2d Cir. 2001).

The Court concludes that Dukes is not entitled to a certificate of appealability from the denial of his motion for relief from judgment; he has failed to make a substantial showing of the denial of a constitutional right or that this Court's procedural ruling was incorrect. Because the Court can discern no good faith basis for an appeal, any appeal would be frivolous. The Court therefore declines to issue Dukes a certificate of appealability, *Long v. Stovall*, 450 F.Supp.2d 746, 755 (E.D. Mich. 2006), and leave to proceed on appeal *in forma pauperis*, because the appeal would be frivolous, *Hence v. Smith*, 49 F.Supp.2d 547, 549 (E.D. Mich. Apr. 22, 1999).

Dukes, No. 07-cv-15011, at *3-4.

Against that backdrop, the Court concludes that Dukes's motions are denied as moot.

II. CONCLUSION

Accordingly, **IT IS ORDERED** that Dukes's "Motion for Certificate of Appealability" [dkt. # 18] and "Motion to Proceed *In Forma Pauperis*" [dkt. # 19] are **DENIED** as moot. This case is closed.

Dated: May 27, 2010

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
May 27, 2010, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk